

**Evidence (Law B 503)**

**Spring Quarter 2020**

Class Meets 8:10 a.m. to 10:20 a.m. on Tuesdays and Thursdays

**Professor John Clynch**

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*office hours by appointment*

**Course Description**

This course will examine the rules governing the admission, exclusion, and presentation of evidence in judicial proceedings. Topics to be covered in this course include relevance; authentication; categorical rules of exclusion; character and habit evidence; witness qualification, and examination; privileges; the “Best Evidence” rule; the hearsay rule, its exceptions, and the Confrontation Clause; impeachment of witnesses. While focused on the Federal Rules of Evidence—upon which most states model their own rules of evidence—the course will also examine key distinctions in state court practice throughout the United States.

**Learning Objectives**

Upon completion of this course, you should:

- Be familiar with most of the federal rules of evidence;
- Master the nuances of the most commonly encountered federal rules of evidence;
- Be familiar with the most common ways in which state rules of evidence deviate from their federal counterparts;
- Be able to look at a rule of evidence from an unfamiliar jurisdiction and quickly recognize the ways in which it differs from its federal counterpart;
- Understand constitutional doctrines that impact the admissibility of evidence;
- Develop your advocacy skills in arguing for or against the admissibility of a given piece of evidence;
- Understand and be able to critically assess the policies underlying any given rule of evidence; and
- Succeed on the evidence portion of your jurisdiction’s bar examination.
- There are aspects of many cases included in the text that involve bias, perception, cultural values, etc. Class discussion regarding these areas is welcome.

## **Required Texts**

- (1) Peter Nicolas, Evidence: A Problem-Based and Comparative Approach (4th ed. 2018) (hereinafter “*Text*”).
- (2) Peter Nicolas, 2018 Statutory Supplement to Evidence (4th ed. 2018) (hereinafter “*SS*”).

*Note: When the syllabus refers to a rule or rules in the SS, you are responsible for reading not only the text of the rule itself, but also any corresponding legislative history.*

## **Protocol for Class Meetings via Zoom**

As a result of COVID-19, classes will not meet in person, but instead via Zoom. You can join our remote class sessions at the following link: <https://washington.zoom.us/j/779609444>

Students are expected to “attend” class via Zoom to the same degree that they would normally be expected to attend a live class (at least 80 percent of the class sessions). Unless a student lacks the technology to do so, they are expected to join the class using video as well as audio and not merely audio. Other expectations include:

- Muting your microphone upon entering the Zoom classroom;
- Keeping your video feed on (not a still picture or black screen) during class;
- Using the “raise hand” feature and/or raising your actual hand when you wish to speak;
- Unmuting your microphone when called upon, and muting it again once you are done speaking.

I understand that many of you may have distractions during class, such as children in the background. I understand that and so do not worry about it and do the best that you can to focus under the circumstances.

## **Course Grading**

Pursuant to an interim law school policy, all courses in Spring 2020 are graded on a mandatory “Credit/No Credit basis.” Your grade in the course will be determined by your performance on a series of four quizzes. The quizzes will be 2 hours each and will cover the topics taught in each two week session. You can begin taking the quiz after the Thursday class ends and turn it in before the next Tuesday class starts. You will need to achieve a cumulative 70% on the quizzes to pass the class. If you achieve a cumulative 80% on the first three quizzes, you will not be required to take the fourth quiz. However, you will still be expected to attend class, complete the reading assignments and contribute in class. The quizzes will be in multiple-choice format and will be open book.

The examination will contain three types of questions: (a) direct doctrinal questions; (b) comparative questions; and (c) problems. The direct doctrinal questions pose a specific doctrinal question and ask you for the answer to that question. The comparative questions present you with a hypothetical state rule of evidence, and ask you how that hypothetical state rule differs from its

federal counterpart. The problems present you with a fact pattern, and ask you to assess the admissibility of evidence related to that fact pattern.

The fourth quiz will take place during final examination week and will encompass the assigned materials for the final two weeks of the course.

**Note:** If you have an ADA accommodation for timed tests, please provide me with the accommodation letter so that Canvas can be programmed accordingly.

### **Podcasting or Recording of Lectures**

Lectures are provided for instructional purposes only and remain the intellectual property of the instructor. All other uses are prohibited. Lecture material is covered by copyright (Title 17, United States Code), and lectures may not be audio- or video-recorded.

Class sessions in this course are taught live, and you are expected to attend in person. As a courtesy to those who are unable to attend a class session in person due to illness or for other reasons—or for those who want to review something that was said in class—the class will be recorded via Zoom and available to be reviewed by students enrolled in the class. **Continued enrollment in this course is considered consent to being audio- and video-recorded for this purpose.** In addition, copies of my PowerPoint slides are available for all students to download in advance of class.

### **Disability-Related Needs**

Your experience in this class is important to me. If you have already established accommodations with Disability Resources for Students (DRS), please communicate your approved accommodations to me at your earliest convenience so we can discuss your needs.

If you have not yet established services through DRS, but have a temporary health condition or permanent disability that requires accommodations (conditions include but not limited to: mental health, attention-related, learning, vision, hearing, physical, or health impacts) you are welcome to contact DRS at 011 Mary Gates Hall or 206-543-8924 or [uwdrs@uw.edu](mailto:uwdrs@uw.edu) or [disability.uw.edu](http://disability.uw.edu). DRS offers resources and coordinates reasonable accommodations for students with disabilities and/or temporary health conditions. Reasonable accommodations are established through an interactive process between you, your instructor(s) and DRS. It is the policy and practice of the University of Washington to create inclusive and accessible learning environments consistent with federal and state law.

### **Religious Accommodations**

Washington state law requires that UW develop a policy for accommodation of student absences or significant hardship due to reasons of faith or conscience, or for organized religious activities. The UW's policy, including more information about how to request an accommodation, is available at Faculty Syllabus Guidelines and Resources. Accommodations must be requested

within the first two weeks of this course using the Religious Accommodations Request form available at <https://registrar.washington.edu/students/religious-accommodations-request/>.

## Syllabus/Reading List

### **Chapter 1: Relevance**

Tues., Mar. 31: Course Introduction (SS Rules 101, 102, 1101-1103; 28 U.S.C. §§ 2072, 2073, 2074); Relevance (*Text* pp. 3-22; SS Rules 104(a), (c)-(e), 401, 402); Conditional Relevance (*Text* pp. 22-26; SS Rule 104).

Thur., Apr. 2: Pragmatic Relevance (*Text* pp. 26-48; SS Rule 403); Limiting Instructions (*Text* pp. 48-50; SS Rule 105).

### **Chapter 2: Authentication**

Tues, Apr. 7: Authentication (*Text* pp. 69-88; SS Rule 901).

Thur., Apr. 9: Authentication (cont'd) (*Text* pp. 89-107; SS Rules 902-903).  
***Note: Assignment for Thursday, April 9 continues under Chapter 3***

### **Chapter 3: Relevance & Prejudice Refined**

Thur, Apr. 9: Character Evidence (*Text* pp. 109-122; SS Rules 404-405).

Tues., Apr. 14: Character Evidence (cont'd) (*Text* pp. 122-136, 145-151); Character Evidence in Sexual Assault Cases (*Text* pp. 151-165; SS Rules 412-415).

Thur., Apr. 16: Habit Evidence (*Text* pp. 165-172; SS Rule 406); Subsequent Remedial Measures (*Text* pp. 172-185; SS Rule 407); Compromises, Payment of Medical Expenses, and Liability Insurance (*Text* pp.185-193; SS Rules 408, 409, 411).

### **Chapter 4: Witness Qualification, Competency, and Examination**

Tues., Apr. 21: Direct & Cross-Examination (*Text* pp. 230-235; SS Rules 611); Personal Knowledge (*Text* pp. 245-249; SS Rule 602); Opinion Testimony by Lay Witnesses (*Text* pp. 252-260; SS Rule 701); Qualification of Expert Witnesses (*Text* pp. 260-266; SS Rule 702); Reliability of Expert Witness Testimony (*Text* pp. 266-277).

PowerPoint Presentations:[4-1](#), [4-2](#), [4-3](#)

Thur., Apr. 23: Continuation

Chapter 5: Testimonial Privileges

Tue., Apr. 28: Introduction (*Text* pp. 325-329; *SS* Rule 501); Attorney-Client Privilege (*Text* pp. 329-344; Proposed but Rejected Rule 503); Spousal Privileges (*Text* pp. 360-376; *SS* Proposed but Rejected Rule 505).

PowerPoint Presentations: [5-1](#), [5-2](#)

## **Chapter 6: The “Best Evidence” Rule**

Thur., Apr. 30: Best Evidence Rule (*Text* pp. 407-441; *SS* Rules 1001-1005, 1007).

PowerPoint Presentations: [6-1](#)

## **Chapter 7: The Rule Against Hearsay**

Tue., May. 5: Introduction (*Text* pp. 447-451; *SS* Rules 801(a)-(c), 802, 805); Who Qualifies as a “Declarant”? (*Text* pp. 451-461; *SS* Rule 801(b)); “Truth of the Matter Asserted” (*Text* pp. 461-473).

PowerPoint Presentations: [7-1](#)

Thur., May 7: Statutory Nonhearsay: Prior Statement by a Witness (*Text* pp. 499-518; *SS* Rule 801(d)(1)); Statutory Nonhearsay: Statements of an Opposing Party (*Text* pp. 518-533; *SS* Rule 801(d)(2)).

PowerPoint Presentations: [7-2](#), [7-3](#)

Tue., May 12: Statutory Nonhearsay: Statements of an Opposing Party (cont’d) (*Text* pp. 533-544); Exceptions: Present Sense Impressions & Excited Utterances (*Text* pp. 544-558; *SS* Rules 803(1), (2)); Exception: Statements for Medical Diagnosis or Treatment (*Text* pp. 558-565; *SS* Rule 803(4)).

PowerPoint Presentations:

[7-4](#), [7-5](#)

Tues. May 14: Exception: Then-Existing Mental, Emotional, or Physical Condition (*Text* pp. 565-578; *SS* Rule 803(3)); Exception: Recorded Recollection (*Text* pp. 578-585; *SS* Rule 803(5)); Exception: Records of a Regularly Conducted Activity (*Text* pp. 585-597; *SS* Rules 803(6), (7)); Exception: Public Records (*Text* pp. 597-609; *SS* Rules 803(8), (10)).

PowerPoint Presentations:

[7-6](#), [7-7](#), and [7-8](#)

Tue., May 19: Unavailability (SS Rule 804(a)); Exception: Former Testimony (*Text* pp. 649-663; SS Rule 804(b)(1)); Exception: Dying Declarations (*Text* pp. 663-675; SS Rule 804(b)(2)); Exception: Statements against Interest (*Text* pp. 675-676, 680-681 nn.4-6, 682-686, 688-690 nn.1,3,4,5; SS Rule 804(b)(3)); Exception: Forfeiture by Misconduct (SS Rule 804(b)(6)).

PowerPoint Presentations:

[7-9](#), and [7-10](#)

Thur., May 21: Confrontation Clause (*Text* pp. 708-740, 745-760, 767-773).

PowerPoint Presentations:

[7-11](#)